

Spearman, Gina v. Broker Solutions, Inc. Et Al

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

GINA SPEARMAN,

Plaintiff,

vs.

BROKER SOLUTIONS, INC., d/b/a  
NEW AMERICAN FUNDING,

Defendant.

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Case No.

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1:20-cv-04981-CAP

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CONTINUED VIRTUAL DEPOSITION OF  
SCOTT FROMMERT  
VOLUME II

Wednesday, February 16, 2022

11:37 a.m.

Robin K. Ferrill, CCR-B-1936, RPR

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## ALSO PRESENT:

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## CONTINUED VIRTUAL DEPOSITION OF

SCOTT FROMMERT

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## DESCRIPTION OF EXHIBITS

EXHIBIT	IDENTIFICATION	PAGE
Exhibit 1	E-mail string Bates labeled SPEARMAN 1412 - SPEARMAN 1413	6

(Original exhibits attached to the Original transcript.)

1 CONTINUED VIRTUAL DEPOSITION OF

2 SCOTT FROMMERT

3 VOLUME II

4 Wednesday, February 16, 2022

5 MR. HARGROVE: Let's go on the record.

6 SCOTT FROMMERT,

7 called as a witness, having been previously  
8 duly sworn by a Notary Public, was examined and  
9 testified as follows:

10 EXAMINATION

11 BY MR. HARGROVE:

12 Q. Mr. Frommert, this is -- we previously  
13 suspended your deposition that was taken on the 28th  
14 and now we're back for resumption. So you're still  
15 under the same oath that you were before.

16 MR. HARGROVE: And, Henry, same  
17 stipulations as before?

18 MR. PERLOWSKI: Yes, Travis.

19 Q. (By Mr. Hargrove) All right. And since  
20 your deposition, we've reviewed the agreement you  
21 have with New American Funding upon your departure.  
22 And at this point we --

23 MR. HARGROVE: Henry, do you want to go  
24 ahead and put your statement on the record with  
25 regard to that issue?

1 MR. PERLOWSKI: Sure.

2 So, Mr. Frommert, understanding that, you  
3 know, you raised concerns about compliance with  
4 that agreement during your prior deposition, and  
5 we've taken a look at it. And I believe it's  
6 Section 5 of your agreement has obligations with  
7 respect to confidential information, trade  
8 secrets and proprietary data of NAF.

9 We can designate any of the portions of the  
10 transcript as confidential pursuant to the  
11 parties' Protective Order. So to the extent  
12 that you have any concerns in that regard,  
13 unless we specifically raise them, you can go  
14 ahead and answer questions today because we can  
15 designate portions of the transcript as  
16 confidential.

17 THE WITNESS: Okay.

18 MR. PERLOWSKI: Is that -- and if you have  
19 any questions as they come up, feel free to  
20 raise them.

21 Q. (By Mr. Hargrove) Okay.

22 All right. Well, Mr. Frommert, we're going  
23 to touch on a couple of areas today.

24 A. Can I just take one minute before we get  
25 started to just turn off the fan and blow my nose and

1 then we can get started? That way I'm not so super  
2 nasally when I'm answering. Just --

3 MS. GIBSON: Of course.

4 Q. (By Mr. Hargrove) Absolutely. And --

5 A. I'll be, like, 60 seconds. Just give me a  
6 moment.

7 Q. Yeah. Take all the time you need.

8 (WHEREUPON, there was a discussion off the  
9 record.)

10 MR. HARGROVE: Let's go back on the record.

11 Q. (By Mr. Hargrove) So, Mr. Frommert, I  
12 wanted to ask you a couple of questions.

13 MR. HARGROVE: And, Nick, could you upload  
14 Spearman 1412?

15 MS. GIBSON: Yes.

16 MR. HARGROVE: Oh, MaryBeth is doing it.  
17 Okay. Good.

18 MS. GIBSON: Scott, if you refresh your  
19 screen you should get an exhibit.

20 THE WITNESS: All right. I'm in the  
21 folders now.

22 (Plaintiff's Exhibit 1, E-mail string Bates  
23 labeled SPEARMAN 1412 - SPEARMAN 1413, marked  
24 for identification.)

25 Q. (By Mr. Hargrove) Let me know when you have

1 it up.

2 A. Looks like an e-mail.

3 Q. Okay. And if you'll go down two-thirds of  
4 the way from the top of the front page, looks like an  
5 e-mail to you, Kelly, Gina, Jan Preslo and Jon Reed,  
6 "Please see below for our call," correct?

7 A. That's correct.

8 Q. All right. And what I want to find out  
9 from you, you had testified earlier that there was a  
10 meeting on or about September 19th of 2019 in Atlanta  
11 with Gina and Kelly to present the P&L model.

12 Do you recall that?

13 A. I do.

14 Q. All right. And in that meeting you said  
15 there was a PowerPoint that was displayed for Gina  
16 and Kelly to review. And what I want to find out  
17 from you and just verify, this is not that PowerPoint  
18 what's in this e-mail, correct?

19 MR. PERLOWSKI: Object to the form of the  
20 question.

21 A. To the best of my recollection, I had  
22 included this in there. This was part of what I  
23 would have presented. Maybe not in whole.

24 Q. (By Mr. Hargrove) Okay. So just so I  
25 verify, you testified about a PowerPoint presentation

1 at that in-person meeting, correct?

2 A. Yes.

3 Q. And it's your testimony that this, what's  
4 contained in Exhibit 1, this table was part of that  
5 presentation but it's not the complete presentation,  
6 correct?

7 MR. PERLOWSKI: Object to the form.

8 A. That's correct, to the best of my  
9 recollection.

10 Q. (By Mr. Hargrove) Okay.

11 MR. PERLOWSKI: Can the court reporter let  
12 Mr. Block in? I just got a note that he hasn't  
13 been admitted.

14 THE COURT REPORTER: There you go.

15 MR. PERLOWSKI: Thanks.

16 MR. HARGROVE: I'll wait until he's  
17 connected to ask my next question.

18 Okay. Looks like he's connected.

19 Q. (By Mr. Hargrove) Mr. Frommert, we talked  
20 about and got up to the point of talking about  
21 whether you had any criticisms of the 2018  
22 financials. And in light of your agreement, I didn't  
23 get as deep into that as I wanted to. But I want to  
24 sort of revisit that area.

25 These issues with the 2018 financials and



1 whether they reflected the true profit and loss  
2 amount for NAF for 2018, are you -- do you have any  
3 role, as CFO, did you have criticisms of the way  
4 those 2018 financials were compiled?

5 A. Yes. First I would -- yes. What I would  
6 say is I wanted to clarify that it's the internal  
7 branch profitability model. So when I hear  
8 financials, I hear external.

9 Q. Okay.

10 A. So it's the external branch profitability  
11 modeling I guess my answer would be yes, part of what  
12 I'm --

13 Q. All right.

14 A. -- you know, tasked to do.

15 Q. All right. And what are those criticisms  
16 of the internal financial documents?

17 MR. PERLOWSKI: Object to the form.

18 A. I guess the highest level would just be  
19 super -- you know, I could probably talk really  
20 technical for a long time. The short version is at  
21 the bottom of the P&L they used three different  
22 layers of what they called corporate margin  
23 profitability as they layered in pieces of allocation  
24 from the corporation. And the way that that was  
25 displayed didn't allow visibility to all of those at

1 all times.

2 Q. (By Mr. Hargrove) Okay. And do you have an  
3 understanding of who at NAF was responsible for that  
4 layout with those three different layers?

5 A. I mean, it was built before I was there.  
6 But to the best of my understanding it was Kristin  
7 Ankeny and Jason O'Bradovich.

8 Q. Did you have any discussions with either  
9 Ms. Ankeny or Mr. O'Bradovich about those three  
10 layers of corporate margin?

11 A. I mean, in building the new model, yes, it  
12 was talked about why they did that, what their goal  
13 was. How I looked at it, how we can move from what  
14 it was to what we were building.

15 Q. Okay. And what did they tell you about why  
16 they did that and what their goal was?

17 MR. PERLOWSKI: Object to the form.

18 Foundation.

19 You can answer.

20 A. I think they wanted to be able to look at  
21 it with -- you know, at different levels. Like, if  
22 you included one thing versus two things versus three  
23 things, what would that look like so that they can  
24 have -- I don't really know why they did it. But I  
25 know that they had different levels of input.

1 Q. (By Mr. Hargrove) So it was never explained  
2 to you why there were three different levels of  
3 input?

4 A. Not in specifics that I recall exactly.

5 Q. Did you ever come to any understanding of  
6 why were there were three different levels of  
7 corporate margin?

8 A. When you look at something like legal  
9 expenses, they would want to say where the branch is  
10 profitable with or without this included. Right?  
11 Operating profit versus fully inclusive profit. So  
12 that's my understanding of why they had those layers.

13 Q. All right.

14 Did you have any discussions with anyone at  
15 NAF about -- well, let me strike that.

16 Did you have any discussions with Rick  
17 Arvielo about the corporate margin and the way that  
18 it was laid out?

19 A. Yes.

20 Q. All right. Tell me about those  
21 discussions.

22 A. I mean, I was tasked to rebuild the P&L  
23 model for the branches. And talking through that,  
24 what I built, a mock-up of what it would look like.  
25 And having that next to what was in place and why we

1 would go from this to this and how I believed it was  
2 better. I mean, that's kind of the overall theme of  
3 the conversations.

4 Q. When you had the discussions with  
5 Mr. Arvielo, were you critical of Mr. O'Bradovich or  
6 anyone else on his team from the way that they had  
7 done it in the past?

8 A. I guess it would --

9 MR. PERLOWSKI: Object to the form.

10 A. I wouldn't really say "critical" as much as  
11 I'd say "I want to build it this way." I could  
12 just -- a better way to build it. I don't know if  
13 you would call that critical.

14 Q. (By Mr. Hargrove) Okay.

15 During the time you were at NAF, did you  
16 have any negative interactions or arguments with  
17 Mr. O'Bradovich about the way the internal finances  
18 had been reported?

19 A. I'm trying to think of how to answer that  
20 because it's really not about we had negative  
21 interactions about the changes and the goal to move  
22 from A to B and his view versus my view.

23 Q. Okay.

24 What was explained to you what his view  
25 versus your view was?

1           A.     What I was trying to build was a branch  
2     profitability model. So you'd, you know, want to  
3     look at the final result of kind of how I laid it out  
4     versus he laid it out, you know, and saying this is  
5     how I wanted to do it and he had it the other way.  
6     And, you know, effectively just disagreeing that  
7     that's how it should be built. I'm not sure how to  
8     answer the question differently.

9           Q.     Did the disagreement at all involve the  
10    different buckets that would, I guess, reflect  
11    different profit and loss amounts depending on what  
12    was counted?

13           MR. PERLOWSKI: Object to the form.

14           THE WITNESS: Sorry, Henry.

15           MR. PERLOWSKI: No, that's okay, Scott.

16           A.     I wouldn't -- I didn't build it with  
17    buckets. I had just one profitability number. No  
18    buckets.

19           Q.     (By Mr. Hargrove) All right.

20                   Did Mr. O'Bradovich believe that there  
21    should still be buckets?

22           A.     I mean, not that he said to me. I don't  
23    think he communicated that specifically to me, no.

24           Q.     Okay. Well, what exactly did he disagree  
25    with about the way that you were going to have the

1 internal reporting?

2 A. I guess the way I would characterize it is  
3 if -- it's really hard to explain. But if you have  
4 just, say, the numbers 1, 2 and 3 on a sheet of paper  
5 and I want to go 1 point a, you know, 2 point a, I  
6 would ask for that. I wouldn't get a response for a  
7 while. And then he would say "I don't, you know,  
8 agree with that." And effectively would be a lot of  
9 conversations to give it across the finish line.

10 Q. Okay.

11 So when you wouldn't get a response, were  
12 you not getting the information that you needed in  
13 order to build the way that you wanted the reporting  
14 to take place?

15 A. Not related to the question, I mean, that  
16 you're asking right now, no. I think when you're  
17 talking through building it the right way, the system  
18 was owned by Kristin. It was -- you know, it's  
19 called Keblar. It's a database. Changing the  
20 structure and layout has to go through the  
21 developers. The developers reported to her.

22 So if I said "Here's change one. I want to  
23 move one and rename it A," I would have to put that  
24 request through her. So I didn't have direct access  
25 because those people did not work for me. I don't

1 know if that answers your question.

2 Q. Okay. So when you wanted to change  
3 something, you weren't able to just change it. You  
4 had to reach out to somebody who would then make a  
5 change within the financial internal reporting  
6 software; is that correct?

7 A. Correct.

8 Q. Okay.

9 All right. And was what you asked to be  
10 changed always changed?

11 A. I would say some of the things that were  
12 more debated would get routed to a round table with  
13 maybe the whole group, Christy Bunce and Rick and the  
14 whole team. I would say most of them. I don't know  
15 what percentage got changed. It might have just been  
16 more difficult to get done than, you know, maybe I  
17 would have wanted.

18 Q. When you were making these changes, were  
19 you given all the information from NAF that you  
20 needed to do your job?

21 MR. PERLOWSKI: Object to the form.

22 You can answer.

23 A. I did not. I had direct access to expense  
24 data through A & B. I did not have direct access to  
25 revenue data, as that's derived from secondary

1 marketing.

2 Q. (By Mr. Hargrove) Did you need direct  
3 access to revenue or expenses in order to do your  
4 job?

5 MR. PERLOWSKI: Object to the form.

6 A. Certainly makes it easier.

7 Q. (By Mr. Hargrove) And you have been CFO of  
8 other companies, correct?

9 A. Yes.

10 Q. All right. Have you ever had trouble  
11 getting expense and revenue data from any of your  
12 other jobs where you're CFO for the company?

13 A. No.

14 Q. Do you have any idea why you were unable to  
15 get the expense and revenue data that you requested?

16 MR. PERLOWSKI: Object to the form.

17 Mischaracterizes his testimony.

18 You can answer.

19 A. I mean, I would really only be speculating  
20 because it's -- I can't control what's in his head.

21 Q. (By Mr. Hargrove) Did you have any  
22 discussions about why you weren't being provided all  
23 the expense and revenue information you requested?

24 MR. PERLOWSKI: Object to the form.

25 Mischaracterizes testimony.



1           You can answer.

2           A.    What I guess I would say is when I would  
3   ask for a change and I wouldn't get the change, I  
4   would get pushback on the change, there was a point  
5   where I would go to Rick and say "Hey. Like, this is  
6   what I'm trying to build. These are the hurdles I  
7   keep hitting with Jason. How do you want me to  
8   proceed," right?

9           So -- because at that point it was very  
10   difficult to accomplish my goal if I had one person  
11   saying "You have six months or five months to get  
12   this goal accomplished" and every time I do it  
13   there's two weeks delay, how am I going to hit my  
14   goal?

15           So, you know, it becomes important to  
16   communicate that and either get acknowledgment and  
17   then a further-out date or some acknowledgment.

18           Q.    (By Mr. Hargrove) I want to shift gears a  
19   tad here. I say "a tad" but I'm jumping around a  
20   little bit from the initial phase of your deposition  
21   and talk about your departure from NAF.

22           Can you walk me through what led to your  
23   departure at NAF?

24           A.    I can give you my perception of it. I  
25   mean, ultimately when we continued -- when I

1 continued to ask for a change and I wouldn't get a  
2 change, I would say to Rick "If I can't make these  
3 changes, then I can't own this. This isn't going to  
4 work. You know, I'm supposed to be running this."

5 And so I think, you know, there were  
6 several meetings where me, him and Jason and Christy  
7 would be in the room basically trying to work through  
8 the tension between us. And effectively, I think,  
9 five times of me saying "It's not going to work" they  
10 just said "You're right. It's not going to work."

11 Q. All right. So what was the tension that  
12 was going on between you, Jon and Christy that was  
13 being addressed in these meetings?

14 MR. PERLOWSKI: Object to the form.

15 Foundation.

16 A. Jason and Christy. I think you said Jon.

17 Q. (By Mr. Hargrove) I'm sorry.

18 A. I mean, it would be these changes. It  
19 would be, you know, getting access to the revenue  
20 data, getting -- changing, you know, something from 1  
21 to 2 or A to B, right? And that not happening.  
22 Right? And the pushback that I would get.

23 And, you know, I just can't -- it makes it  
24 very challenging to do your job when every day you're  
25 dealing with that and somebody is clearly putting up

1 blockades.

2 Q. And who was it that was putting up the  
3 blockades?

4 A. Some version of Jason or Kristin. You  
5 know, a combination depending on the day of the week  
6 or the topic.

7 Q. Revenue data, I just want to make sure that  
8 I'm clear. You did not, as the CFO, have direct  
9 access to NAF's revenue data?

10 A. There's a difference for this report. The  
11 revenue data for the external reports flows through.  
12 When you sell the loan you get a Purchase Advice. I  
13 had access to that. Right? I have full access to  
14 that, what's booked when you lock the loan.

15 Without getting too complicated, you might  
16 think you're going to sell it for two dollars. If  
17 the market moves up and down, there's a derivative  
18 hedge that offsets that. You can't look at the final  
19 sale price. I did have access to the final sale  
20 price.

21 When you lock the loan, what you expect to  
22 make off of it is known. You know, effectively you  
23 lock it. If somebody looks at the market and says  
24 "Okay. It should be worth 102 at this point in  
25 time," that's how you build branch profitability.

1 It's not off of actuals. You couldn't do it off of  
2 actuals because of the derivative, so I did not have  
3 access to the expected gain on sale raw data.

4 Q. Okay. Did you ask to have access to the  
5 expected data on sale raw data that you needed?

6 A. Yes.

7 MR. PERLOWSKI: Object to the form.

8 THE WITNESS: Sorry, Henry. I'll pause.

9 MR. PERLOWSKI: That's okay.

10 A. Yes.

11 Q. (By Mr. Hargrove) All right. Who did you  
12 ask?

13 A. I mean, I think I asked Jason. I asked --  
14 I basically would ask Jason and not get it and tell  
15 Rick I wasn't getting it. He would say "Work it out  
16 with Jason." And we kind of went in a circle.  
17 Discussed the issue with Christy Bunce as to not  
18 being able to get it. You know, ended up in a  
19 meeting where the three of us would talk about it.

20 You know, at some point it was "Hey, give  
21 him the data" and then I didn't get the data, which  
22 is towards the end. And I basically said "You need  
23 to give me the data. You agreed. We all agreed to  
24 give me the data on this day."

25 You know, I think that's when Rick

1 basically called me and said "You know, you're not  
2 going to get the data." I don't know. "You're not  
3 getting it." And two days later I was gone.

4 Q. So after they agreed to give you the data,  
5 Rick then said "We're not giving you the data,"  
6 Mr. Frommert?

7 A. That's correct.

8 Q. All right. Do you have any idea why?

9 A. I mean, he ultimately said he didn't trust  
10 me. That's the answer he said. I don't know.

11 Q. Having that data, what negative could have  
12 befallen NAF by you having the data you needed as CFO  
13 to do your job?

14 MR. PERLOWSKI: Object to the form.

15 Foundation. Speculation.

16 You can answer.

17 A. I don't think -- I will say at that point  
18 it was just a very broken relationship. I couldn't  
19 tell you. You'd have to ask Rick.

20 Q. (By Mr. Hargrove) Okay. Did you ever have  
21 a discussion with Rick Arvielo about why you were not  
22 being given this data that you had been told you  
23 would be provided?

24 A. Yes. Several.

25 Q. And what were you told?

1           A.     Pretty much the same thing I just said,  
2     like, "You can get it from Jason. Ask Jason. You  
3     got to figure out how to work with Jason."

4                     Then Jason wouldn't give it to me. I'd go  
5     back. He'd say "He's sick of talking about it."

6                     We'd go in a circle. I'd say "I can't keep  
7     doing this. If you're going to keep doing that, this  
8     isn't going to work." And eventually it just kind of  
9     back-and-forth and he said "Fine. It's not going to  
10    work."

11           Q.     Okay.

12                     With regard to -- and we were talking about  
13    those final sale prices. I assume the expense raw  
14    data was kind of part and parcel of this discussion?

15           A.     No, I expect --

16                     MR. PERLOWSKI: Object to the form.

17                     Foundation. Mischaracterizes his testimony.

18                     You can answer.

19           A.     It comes from a different system of  
20    records. It is the --

21           Q.     (By Mr. Hargrove) Okay.

22           A.     Yeah. So that's done by the Accounts  
23    Payable team, which directly reported to me. I had  
24    direct access.

25           Q.     Okay. So you did have access to all of the

1 expense data at NAF?

2 A. That's correct.

3 Q. All right. But you did not have all of the  
4 revenue data, correct?

5 A. The expected gain on sale revenue data,  
6 correct.

7 Q. All right. And to do your job as CFO, did  
8 you feel that was something that -- some information  
9 that you needed?

10 A. Yes.

11 Q. All right. Why did you need that  
12 information?

13 A. Just to basically tie everything up, make  
14 sure it adds all up. Right? So there's a lot of  
15 tests you do with the raw data. It goes in, you push  
16 dollar in, do you get a dollar out? That's test one.  
17 I mean, there's a variety of tests you do.

18 If you push a dollar in and expect a  
19 dollar, then you test that against what you  
20 collected, which we talked about won't be the same  
21 because of the market and the shifts. But you want  
22 to see the difference and you want to look at the  
23 derivative and you want to see if that calculated and  
24 blended out effectively.

25 Q. Right. And did you explain all of this to

1 Mr. Arvielo when you had discussions with him about  
2 not being provided this data?

3 A. I don't think we got to that level of  
4 detail. It was much, much higher level. Just, you  
5 know, "I need this. This is the role." Or, you  
6 know, "Here's what I'm trying to get. Here's the  
7 roadblocks I'm hitting. How can you help me?"

8 Q. You testified earlier that you believed  
9 that you weren't given this information because NAF  
10 didn't trust you. What's your basis for that belief?

11 MR. PERLOWSKI: Object to the form.

12 Mischaracterizes his testimony.

13 You can answer.

14 A. I mean, I think -- I don't remember the  
15 amount of days, but one or two days before this, you  
16 know, I ended up leaving New American. I basically  
17 said "You need to give me this data." I drew a line  
18 in the sand, if you will. And Rick called in and  
19 said "I'm not going to give it to you. I don't trust  
20 you." And then a day or two later I got a call from  
21 Christy that that was the end of my employment.

22 Q. (By Mr. Hargrove) When Mr. Arvielo told you  
23 "I'm not going to give it to you. I don't trust  
24 you," did you remind him that he had agreed to that  
25 that data should be provided to you earlier?



1 A. No.

2 Q. Okay. At that point did you realize it was  
3 probably time for you to make an exit and figure out  
4 something else to do?

5 A. I figured within -- I figured within a day  
6 or two I would get a call and the relationship would  
7 be over.

8 Q. Okay.

9 This information that you were not provided  
10 about revenue, did it have any effect on NAF's tax  
11 return or tax reporting?

12 A. No.

13 Q. All right. Did you, in your role as CFO,  
14 did you have any role in compiling the data that was  
15 used for NAF's tax return?

16 A. It would be under the accountant that  
17 reported to me. But I didn't directly get involved  
18 with data. He did his taxes outside of the company.

19 Q. Okay. Do you have knowledge of the tax  
20 preparation? I know that wasn't -- you said that was  
21 not something directly. Did you have indirect, an  
22 indirect role as CFO with the tax preparation?

23 A. No.

24 Q. In your opinion, from being the CFO at NAF,  
25 do you believe that NAF appropriately reported all of

1 its tax obligations on its tax returns?

2 A. We have corporate taxes. You have  
3 Arvielo's personal taxes. You have a lot of  
4 different tax buckets, I mean, I was not involved  
5 with. It's a pass-through, so I don't get involved  
6 with anything that passes through to the best of my  
7 knowledge on their actual NAF tax return, yes.

8 Q. Okay. Well, how about the Arvielos'  
9 pass-through? Did you come across anything that led  
10 you to believe there was something improper with the  
11 taxes, of the Arvielos' taxes?

12 A. I wasn't able to see their personal taxes  
13 at all.

14 Q. Okay. Would the information that you were  
15 not -- that Mr. Arvielo said he didn't trust you  
16 with, so you didn't get it, would that have any  
17 effect on either the Arvielos or NAF's tax  
18 obligations?

19 MR. PERLOWSKI: Object to the form.  
20 Foundation. Speculation.

21 You can answer.

22 A. The taxes would be based off of the actual  
23 sold loan, not the expected gain on sale. The  
24 expected gain on sale was what I didn't have access  
25 to. It's when you lock the loan what you think it

1 will be worth. You do your taxes off what it's  
2 actually sold at irregardless of what you thought it  
3 would be worth.

4 Q. (By Mr. Hargrove) And I'm recycling a  
5 little bit to a question before I was trying to  
6 figure out. What nefarious use could someone make of  
7 this data that NAF, through Mr. Arvielo, said it  
8 didn't trust you to have?

9 MR. PERLOWSKI: Object to the form.  
10 Foundation. Speculation.

11 You can answer.

12 A. Are you asking me to give you multiple  
13 options of what it could be?

14 Q. (By Mr. Hargrove) Yes.

15 A. What could cause it?

16 Q. Yes.

17 A. You could understate the revenue, therefore  
18 understate the profitability. You could push  
19 profitability up for one region, down for -- I mean,  
20 effectively you can move -- it's a lever. Right?  
21 It's a lever on the machine. So you can move  
22 something in one direction or another. That would  
23 be, you know, one reason.

24 If they are -- I mean, on most of these  
25 companies, is you -- when you look at revenue, it's

1 not as simple as I sold, you know, my mouse for a  
2 dollar. It's all the pieces of the mouse inside of  
3 it. And so what you give credit to a branch for may  
4 not be all the pieces of the puzzle. So you could be  
5 taking and excluding some of those things.

6 A specific example may be, like, something  
7 called a spec pool. When you take a spec pool, you  
8 get an additional premium for selling these, you  
9 know, CRA loans. You generally don't give credit to  
10 the branches. That's a -- you know, it's an internal  
11 report. You would give credit to the team that did  
12 that trade and structured that trade. So there could  
13 be good or bad reasons for doing it.

14 Yeah. I don't know if that answers your  
15 question.

16 Q. So if NAF had provided you all that  
17 information, then, that you asked for about revenue,  
18 do you feel like you would have then been able to  
19 accurately assess the internal financials? Or would  
20 you -- let me go back and start the question over.

21 Had you been provided the revenue  
22 information you asked for, would you have been able  
23 to more accurately report on a branch and/or  
24 division-wide basis profit and loss within NAF?

25 A. I would have been more able to accurately

1 validate what I was reporting was accurate.

2 Does that make sense?

3 Q. That does, yes. So without that  
4 information, there could have been inaccuracies on  
5 the internal data and you would not be able to test  
6 that data to assure it was correct. Is that an  
7 accurate summation?

8 MR. PERLOWSKI: Object to the form.

9 A. Correct.

10 Q. (By Mr. Hargrove) All right. And the  
11 reason you wanted to have that data was so you could  
12 conduct that exact task, testing of the internal  
13 financial data, correct?

14 A. Yes, that's correct.

15 Q. Because otherwise, you were basically just  
16 taking someone's word for it without being able to  
17 check on your own as CFO, correct?

18 A. I mean, there's a little bit more. You  
19 could use some industry indicator to see if you're in  
20 range. But effectively, yes.

21 Q. Okay. And did you feel like those industry  
22 indicators were sufficient without you having that  
23 revenue data that you requested but were denied?

24 A. I felt pretty confident. I just obviously  
25 prefer to be exact versus, you know, pretty

1 confident. You can't say for sure. If there's one  
2 at the highest levels, yes. At the branch-to-branch  
3 level, maybe not or maybe within some cut. Maybe  
4 not. It's very hard to say.

5 But at the highest levels, the numbers seem  
6 to generally reflect industry averages.

7 Q. Okay. But without that data you needed,  
8 checking branch-wide and division-wide was -- let me  
9 go back.

10 You talked about the general numbers. Are  
11 you saying that the branch-specific -- excuse me.  
12 Let me go back.

13 You talked about the overall numbers. But  
14 to get the branch and division-specific numbers, you  
15 believed you needed these revenue figures to test  
16 that data; is that correct?

17 A. As you bring in more data it blends.  
18 Right? So it's harder to tell as you go higher up  
19 with the blend. As you get very, very small amounts  
20 of data, under 30 units to be specific, any  
21 miscalculation, any inaccuracy would be more  
22 noticeable.

23 Q. Okay. And when you were tasked with  
24 preparing this P&L model we talked about some -- and  
25 if you need to take a break, let me know. I can tell

1 looking at you.

2 THE WITNESS: Just give me one second.

3 MR. HARGROVE: Yeah, let's take a break.

4 THE WITNESS: Stop the video and blow my  
5 nose. I'm sorry.

6 MR. HARGROVE: No worries.

7 THE WITNESS: One minute.

8 (WHEREUPON, a recess was taken.)

9 MR. HARGROVE: Let's go back on the record.

10 Q. (By Mr. Hargrove) Mr. Frommert, did you  
11 feel like Mr. O'Bradovich was hiding something as far  
12 as his refusal to provide you those revenue figures?

13 A. I don't know. Okay. I guess I would say I  
14 thought a lot about that, I guess. It really  
15 probably -- if I'm guessing, is more of territorial,  
16 you know, maybe ownership of something. I'm just  
17 speculating. I have no idea.

18 Q. Okay.

19 I want to take us back to something that I  
20 asked earlier. And in the initial iteration of your  
21 deposition, I asked if you had discussions with Rick  
22 Arvielo about the tension between you and  
23 Mr. O'Bradovich. And I can tell you it was you that  
24 responded "I don't know that I can. Can I talk about  
25 that? I have an NDA in place about this topic."

1           So since we've dealt with the NDA issue,  
2           can you expound on the discussions you had with  
3           Mr. Arvielo about the tension between you and  
4           Mr. O'Bradovich?

5           A.     I would say I couldn't tell how many  
6           specific times. But multiple occasions I would go to  
7           him and talk to him about a variety of issues, if you  
8           will, with Jason. And the walls I was hitting and my  
9           inability to, you know, be able to find a way to  
10          partner with him or at least have some sort of  
11          half-cordial relationship with the guy to build  
12          success.

13          Q.     Okay. And it was multiple conversations?

14          A.     Yes. Yes, sir.

15          Q.     Was he defensive of Mr. O'Bradovich,  
16          neutral or did he appear to be on your side?

17          A.     Probably would say at the very beginning it  
18          was very neutral or "Let me help you get there." And  
19          over time I think that became more of -- yeah, I  
20          don't know. It's a tough topic I guess I would say.  
21          He said -- I wouldn't say took his side. I guess he  
22          just made it very clear that he wasn't going to  
23          support me. He would say "Figure it out with Jason."  
24          And that clearly wasn't going to happen.

25                 So I would go back to him and say "I'm not



1 able to accomplish that goal effectively." And, you  
2 know, those turned into some heated arguments.

3 Q. Heated arguments with you and Mr. Arvielo?

4 A. Yes. Heated conversations, maybe not an  
5 argument.

6 Q. Right. What was the content of the heated  
7 conversations with Mr. Arvielo?

8 A. "Here it is. Figure it out. You guys can  
9 figure it out. You're adults. You're  
10 professionals." You know, "I don't want to hear it  
11 any more." You know, it's, like, you know,  
12 effectively "If you can't get it done, you go back."  
13 You know, that was the topic.

14 Q. Okay. And ultimately it was go back to the  
15 person who won't give you the data. And he stood  
16 behind Mr. O'Bradovich, not you, correct?

17 A. It wasn't just about the data.

18 MR. PERLOWSKI: Object to the form.

19 Mischaracterizes testimony.

20 You can answer.

21 A. Yeah. It wasn't just the data. Just to be  
22 clear, it was the data. It would be the literal  
23 "Look. If I want to" -- when you look at a P&L and  
24 you have six buckets, sometimes I want to collapse  
25 those into one. You hit a button and expand it and

1 make it be six. That takes work on the developer's  
2 end. That's, in my opinion, the better way to go.  
3 But I would ask that. It wouldn't get done.

4 And so then I would -- you know, I'm not  
5 accomplishing the goal of building. I'm relying on  
6 another team. I'm going to talk about that. Right?  
7 And so it wasn't just that data. It would be, you  
8 know, "I think this row should be gray." I mean,  
9 it's simple of things as that.

10 You know, I am used to owing something and  
11 maybe that's on me. Right? But I'm used to owing it  
12 and saying "This is what it looks like and this is  
13 the result." And when I'm not able to accomplish  
14 that I don't feel empowered I'm going to have that  
15 conversation.

16 Q. (By Mr. Hargrove) Right.

17 So did you ever hear either Rick or Patty  
18 Arvielo say that the regional managers made too much  
19 money?

20 A. I don't recall somebody saying they made  
21 too much money. I think people knew they made good  
22 money. There would be things, like, "You guys are  
23 making a lot of money. We did not make money" or  
24 things of that nature. But I do not recall  
25 specifically somebody saying "You make too much

1 money."

2 Q. Okay.

3 When you were building, you were tasked to  
4 build the P&L model for Gina and Kelly and the other  
5 regionals, correct?

6 A. Yes, sir.

7 Q. The data, the revenue data that you were  
8 not provided by the company, is that something that  
9 would have been useful to you in creating this P&L  
10 model?

11 A. Yes, sir.

12 Q. All right. And you testified earlier  
13 because that would give it broken down more by region  
14 by way of example, correct?

15 A. Yes. To clarify, the data was already  
16 there in the system, in the database, invisible on  
17 the reporting tool, Keblar. Right? So I could see  
18 the output. I just simply could not see the raw  
19 data.

20 Q. Okay. And the raw data was something that  
21 would have made your job of preparing a P&L plan for  
22 the regionals easier to do, correct?

23 A. I think that's part of model building and  
24 model development. You get the raw data and you test  
25 it and you analyze it. Right? And you look for

1 issues.

2 So the first time in my career I didn't own  
3 the data. Right? And own the actual people. So I  
4 was trying to be adaptive to the situation. I think  
5 that because they worked for another person, I tried  
6 to work in that situation.

7 I don't think -- I think there's a variety  
8 of tests you should perform. It's harder to do those  
9 tests. Right? So I tried -- when I talked earlier  
10 about industry numbers, if I don't have raw data,  
11 right, I'm going to go to industry. I'm going to try  
12 to test that way.

13 Q. So that raw data that you did not have, did  
14 you have any discussions with Kelly or Gina about the  
15 fact you had not been provided everything that you  
16 asked NAF for to prepare this P&L model?

17 A. No, sir.

18 Q. Do you have any understanding as to whether  
19 Gina and Kelly felt there was a lack of transparency  
20 about the P&L model?

21 MR. PERLOWSKI: Object to the form.

22 Speculation.

23 You can answer.

24 A. They told me several times they, you know,  
25 had concerns about the data, the report, throughout a

1 couple of meetings.

2 Q. (By Mr. Hargrove) Tell me about the  
3 discussions you recall with Gina, whether Kelly was  
4 present or not, about the P&L model and any concerns  
5 she might have.

6 A. I mean, I think it was a variety of things.  
7 "How do I know that these expenses are mine?" You  
8 know, "How would I know that this loan didn't get  
9 paid more on or less on?" "Are you counting this  
10 concession?" I think we went through a lot of things  
11 to the best of my recollection.

12 I think, you know, they mentioned in the  
13 past "We thought we were making money, then we  
14 weren't. So how do we know this is true this time?  
15 How is it going to be different this time?"

16 I did my best to -- you know, while I did  
17 not have that data, I had spent still quite a bit of  
18 time in that model. So I did my best to give them my  
19 understanding of the data, the situation, the flow of  
20 what was being presented to them.

21 Q. Okay. Did you discuss with them the fact  
22 that you, in fact, had not been provided with all the  
23 data you asked for to prepare the P&L model?

24 A. No.

25 Q. When Gina mentioned that she felt there was

1 a lack of transparency, did you feel that was true in  
2 light of the fact that you hadn't been provided all  
3 the information you had asked NAF for?

4 MR. PERLOWSKI: Object to the form.

5 A. Yes. I think we specifically set a meeting  
6 with Jason to cherrypick ten specific loans or  
7 something along those lines to have him prove it to  
8 her, something along that to the best of my  
9 recollection.

10 Q. (By Mr. Hargrove) And did the testing of  
11 those ten specific loans fare out correctly?

12 A. I don't remember exactly. I think it was a  
13 little bit rough. But I think we generally got to  
14 some comfort level, yes.

15 Q. Didn't you have similar concerns as to the  
16 transparency of NAF's financial data by the fact that  
17 you weren't provided everything that you asked for?

18 MR. PERLOWSKI: Object to the form.

19 Foundation. Asked and answered.

20 You can answer again.

21 A. I don't know that I would say I had similar  
22 concerns. I had maybe different concerns. You know,  
23 on building a model, I want to test the data. I  
24 think she has no insight to the whole model at all.  
25 Right? So I couldn't say that there were similar

1 concerns. I think hers are probably broader.

2 Q. (By Mr. Hargrove) Okay. But you had  
3 concerns as to how transparent NAF was with its  
4 revenue figures that it wouldn't provide you as the  
5 CFO, correct?

6 MR. PERLOWSKI: Object to the form. Asked  
7 and answered about five times.

8 You can answer a sixth time.

9 A. Concerns? I guess I would just try to use  
10 my own words.

11 I was frustrated. I wanted to be able to  
12 go through the process I had been doing for a long  
13 time. I wasn't able to do that.

14 I don't know if I would use the word  
15 "concerns." I was aggravated if I'm using a, you  
16 know, descriptor.

17 MR. HARGROVE: Mr. Frommert, let's take a  
18 break. If I have anything else for you it won't  
19 be very much. But if we could go to a breakout  
20 room and I'm thinking about five minutes and  
21 hopefully we can let you get over to Urgent Care  
22 soon.

23 MR. PERLOWSKI: And, Mr. Frommert, I'm  
24 probably going to have about five or ten minutes  
25 of questions but that's about it.

1 THE WITNESS: Okay.

2 MR. PERLOWSKI: Thank you.

3 (WHEREUPON, a recess was taken.)

4 MR. HARGROVE: I don't have any other  
5 questions right now. I know Mr. Perlowski has  
6 indicated he has a few and that may cause me to  
7 ask a follow-up question. But as we sit right  
8 now I'm good.

9 MR. PERLOWSKI: Mr. Frommert, I will try to  
10 be as brief as possible. And thank you so much  
11 for your time today.

12 EXAMINATION

13 BY MR. PERLOWSKI:

14 Q. You had mentioned that the information that  
15 you were trying to receive from Mr. O'Bradovich was  
16 expected gain on sale revenue data.

17 Do I have that -- is that correct, how I'm  
18 phrasing it?

19 A. Yes, sir.

20 Q. Could you, in laypersons' terms, just  
21 explain to me what that is?

22 A. When you do a loan, when you originally get  
23 the loan, the borrower decides at this moment in time  
24 they are going to lock in the rate at that market  
25 rate. They lock the loan. And so you would look at



1 the board and see what Fannie, Freddie, Ginnie are  
2 trading at at that point in time and what that loan  
3 should be worth. So you expect to make that amount  
4 of profit at that point in time.

5 Q. So if I was the borrower, let's say I'm  
6 locking in a loan at 3.5 percent interest on a  
7 30-year loan, you'd be able to -- so if that's the  
8 rate lock, you would then be able to compare that  
9 rate lock to certain, I think you said Fannie,  
10 Freddie, information to determine what the expected  
11 profit on that loan would be at a given moment in  
12 time?

13 A. The expected sale price, not the profit.

14 Q. I'm sorry. The expected sale price. So in  
15 other words, if NAF then wanted to sell that loan, is  
16 that what you're talking about?

17 A. If NAF then wanted to sell that loan, what  
18 you would expect to make. So just like you  
19 described, that 30-year, you know, interest rate, you  
20 would look on a board, like a stock market, and see  
21 that that was currently trading at "X" 102, 103. And  
22 the two or the three would represent two percent,  
23 three percent times the loan amount, which would give  
24 you the expected gain on sale in dollars or basis  
25 points or percentage, whatever way you wanted to

1 choose to look at it.

2 Q. And what I -- you also, in responding to  
3 Mr. Hargrove's questions, and your testimony today  
4 will speak for itself, I'm just trying to understand  
5 it. You said that in Keblar data was visible but  
6 that you didn't have the raw data. So I'm just  
7 trying to understand, what was visible relative to  
8 what you didn't have access to?

9 A. So what you would see is a branch. You  
10 could get to a branch and you could look at the loans  
11 in the branch. But you would not see the tape, the  
12 raw tape that was uploaded to compare to what was put  
13 on the board. Meaning if I had every single time --  
14 just think of today and I just do three loans and I  
15 go two dollars, three dollars, four dollars, I take  
16 that upload sheet with those numbers and I upload  
17 them to Keblar, I can see the culmination. I might  
18 even be able to see the individual loans.

19 But me, as a CFO, I want to see that raw  
20 sheet to compare to what ends up in Keblar. Because  
21 data, in a database, you might have three but only  
22 two become visible. Data has functionality that is  
23 sometimes flawed.

24 Does that answer your question?

25 Q. Sort of. And this could very well be a

1 product of -- again, I think we talked about before,  
2 I don't have, you know, an accounting/finance  
3 background.

4 So the data that you weren't receiving,  
5 what was your purpose in wanting to see it? Like, in  
6 other words, of what value did having that data have  
7 to you as an ex-Chief Financial Officer?

8 A. I would take the raw data. I would look at  
9 the sum of that number effectively. And I would  
10 partition out by branch or by segment or whatever way  
11 I wanted to look at it, I would audit the end result  
12 coming out of Keblar.

13 So I would load it into Keblar. Is that  
14 also what's coming out of Keblar? That's  
15 effectively, in the shortest version, what I would  
16 use that for.

17 Q. Okay.

18 The discussions that you mentioned that you  
19 were having with Mr. Arvielo about your efforts to  
20 receive the expected gain on sale revenue data, when  
21 were those discussions taking place generally  
22 speaking?

23 A. I guess I'm not sure how to answer that  
24 question. From when I started to when I ended, I --  
25 some interval, called every month or give or take.

1 Towards the end it was probably much more frequent.  
2 In his office? I'm not sure specifically how you're  
3 looking for me to phrase that.

4 Q. No, I'm just trying to get a timeframe  
5 for -- and if you just could refresh our recollection  
6 on when was your last day with NAF roughly?

7 A. May of '19, if I'm recalling properly, or  
8 '20. I'd have to go look. I can't remember what  
9 years.

10 Q. Well, you met with Ms. Spearman and  
11 Mr. Reed and Ms. Allison in Atlanta in September of  
12 '19.

13 A. Yes. So sorry, May of '20.

14 Q. Okay.

15 A. I believe it specifically was the last day  
16 of May.

17 Q. And NAF implemented a P&L model in the  
18 spring of 2020?

19 A. Correct.

20 Q. So the discussions that you were having  
21 with Mr. Arvielo, were they still ongoing after NAF  
22 implemented a P&L model?

23 A. About similar context, yes.

24 Q. Okay.

25 To your knowledge, did your efforts to have

1 access to the expected gain on sale raw revenue data  
2 have anything to do with NAF's decision about how it  
3 was going to compensate its regional managers?

4 A. No.

5 Q. To your knowledge, did your having access  
6 or not to the expected gain on sale of raw revenue  
7 data have anything to do with NAF's decision of  
8 whether to reimburse certain marketing expenses or  
9 not?

10 A. No.

11 Q. To your knowledge, did your having access  
12 or not to the expected gain on sale of raw revenue  
13 data have any impact on NAF's decisions about what  
14 pricing exceptions it would approve?

15 A. It could have if you weren't profitable.  
16 Right? So the goal would be to look at  
17 profitability.

18 But ultimately that data, whether I had  
19 access to it or not, wouldn't change the decision.  
20 The decision would be made based on profitability.

21 Q. Okay and you had the information available  
22 to evaluate profitability?

23 A. We had the Keblar tool at the branch level  
24 to look at branch region rollups.

25 Q. And to your knowledge, based on your

1 experience as NAF's CFO, did NAF have to file audited  
2 financial statements each year as a HUD lender?

3 A. Yes.

4 Q. And did NAF do that, submit audited  
5 financial statements during your tenure as CFO?

6 A. Yes.

7 Q. Were those financial statements audited to  
8 your knowledge?

9 A. Yes.

10 Q. Were any concerns raised regarding NAF's  
11 audited financial statements that you're aware of?

12 A. No. I mean, there's always some level of  
13 commentary that they make. That's their job. But no  
14 material findings were written up.

15 Q. And did NAF use outside accounting  
16 professionals to assist in the preparation of its  
17 audited financial statements?

18 A. Yes.

19 Q. Okay. Do you recall who NAF used?

20 A. I believe they were using KSJG.

21 Q. Okay.

22 A. That might have been Richey May. I think  
23 it was KSJG, though. I'm pretty sure. Maybe they're  
24 culled with them now. They changed their name. They  
25 merged.

1 MR. PERLOWSKI: Thank you, Mr. Frommert.

2 THE WITNESS: No more questions?

3 MR. PERLOWSKI: And again, thank you.

4 MR. HARGROVE: I just got a brief  
5 follow-up.

6 EXAMINATION

7 BY MR. HARGROVE:

8 Q. When the decision was made in February 2019  
9 to stop paying marketing expenses, were you employed  
10 by NAF?

11 A. No, sir.

12 Q. Okay. So you wouldn't have any knowledge  
13 as to why that decision was made, then, correct?

14 A. No.

15 Q. And you're not privy to why NAF made its  
16 decisions as to compensation for any time you weren't  
17 employed there, correct?

18 A. No, I'm not.

19 Q. Okay.

20 MR. HARGROVE: Give us two brief minutes.  
21 I think we're finished. Let me consult with my  
22 co-counsel real briefly. I'm going to go off  
23 the camera for just a second.

24 MR. PERLOWSKI: Sure.

25 (WHEREUPON, a recess was taken.)

1 MR. HARGROVE: We're ready to go back on  
2 when everybody else is.

3 Mr. Frommert, we don't have any further  
4 questions for you. I thank you for your time  
5 and I hope you feel better soon.

6 I don't know if Mr. Perlowski has any  
7 follow-ups but we're done.

8 MR. PERLOWSKI: I do not, Travis. Thank  
9 you.

10 And, Mr. Frommert, again, best of luck with  
11 feeling better and hope everything is okay.  
12 Thank you for your time today.

13 THE WITNESS: Thanks.

14 MS. GIBSON: Thanks, Scott. Hope you feel  
15 better.

16 (WHEREUPON, the proceedings were concluded  
17 at 12:51 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25



## C E R T I F I C A T E

STATE OF GEORGIA )

) ss.:

FULTON COUNTY )

I, Robin Ferrill, Certified Court Reporter within  
the State of Georgia, do hereby certify:

That SCOTT FROMMERT, the witness whose  
deposition is hereinbefore set forth, was duly sworn by me  
and that such deposition is a true record of the testimony  
given by such witness.

I further certify that I am not related to any  
of the parties to this action by blood or marriage; and  
that I am in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 22nd day of February, 2021.



---

ROBIN K. FERRILL, RPR

1 To: Mr. Perlowski

Re: Signature of Deponent SCOTT FROMMERT

2 Date Errata due back at our offices: 30 days

3 Greetings:

4 This deposition has been requested for read and sign by  
the deponent. It is the deponent's responsibility to  
review the transcript, noting any changes or corrections  
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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